

Department of Energy

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following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(3) *Consequence of filing petition.* The filing of a Petition for Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(4) *Granting: criteria, conditions, and publication.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant a waiver if he or she determines that either the basic model for which the waiver was requested contains a design characteristic which prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. The Assistant Secretary for Energy Efficiency and Renewable Energy may grant a waiver subject to conditions, which may include adherence to alternate test procedures. DOE will promptly publish in the FEDERAL REGISTER notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(g) *Revision of regulation.* Within one year of the granting of any waiver, the Department will publish in the FEDERAL REGISTER a notice of proposed rulemaking to amend our regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department will publish in the FEDERAL REGISTER a final rule. Such waiver will terminate on the effective date of such final rule.

(h) *Exhaustion of remedies.* In order to exhaust administrative remedies, any person aggrieved by an action under this Section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 1003, subpart C.

§ 431.402 Preemption of State regulations for commercial HVAC & WH products.

Beginning on the effective date of such standard, an energy conservation standard set forth in this Part for a

commercial HVAC & WH product supersedes any State or local regulation concerning the energy efficiency or energy use of that product, except as provided for in Section 345(b)(2)(B)–(D) of the Act.

§ 431.403 Maintenance of records.

(a) If you are the manufacturer of any covered equipment, you must establish, maintain and retain records of the following:

(1) The test data for all testing conducted pursuant to this part;

(2) For electric motors, the development, substantiation, application, and subsequent verification of any AEDM used under this part; and

(3) For electric motors, any written certification received from a certification program, including a certificate of conformity, relied on under the provisions of this part.

(b) You must organize such records and index them so that they are readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this Part (except tests performed by us directly).

(c) For each basic model, you must retain all such records for a period of two years from the date that production of all units of that basic model has ceased. You must retain records in a form allowing ready access to DOE, upon request.

§ 431.404 Imported equipment.

(a) Under sections 331 and 345 of the Act, any person importing any covered equipment into the United States must comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any covered equipment offered for importation in violation of the Act and of this part will be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered equipment

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will not violate the Act and this part, or will be exported or abandoned to the United States.

§ 431.405 Exported equipment.

Under Sections 330 and 345 of the Act, this Part does not apply to any covered equipment if:

(a) Such equipment is manufactured, sold, or held for sale for export from the United States (or such equipment was imported for export), unless such equipment is, in fact, distributed in commerce for use in the United States; and,

(b) Such equipment, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered equipment is intended for export.

§ 431.406 Subpoena.

Pursuant to sections 329(a) and 345 of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served upon any persons subject to this part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 431.407 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt from public disclosure should submit one complete copy, and 15 copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Depart-

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ment shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

Subpart W—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

SOURCE: 69 FR 61941, Oct. 21, 2004, unless otherwise noted. Redesignated at 70 FR 60417, Oct. 18, 2005.

§ 431.421 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment not be preempted.

(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment.

§ 431.422 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of covered equipment for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he/she determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy interests. For the purposes of this regulation, the term “unusual and compelling State or local energy interests” means interests which are substantially different in nature or magnitude from those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy plan and forecast, the